

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

<p>CACERES DRYWALL CORPORATION, Individually and on Behalf of All Others Similarly Situated, <i>Plaintiff,</i> vs. NATIONAL GYPSUM COMPANY a/k/a NEW NGC, INC.; GOLDEN EAGLE INDUSTRIES, INC. a/k/a SPANGLER COMPANIES, INC.; LAFARGE NORTH AMERICA INC., LAFARGE S.A. a/k/a LAFARGE WORLDWIDE; AMERICAN GYPSUM COMPANY LLC, GEORGIA-PACIFIC LLC; USG CORPORATION; L&W SUPPLY CORPORATION; CERTAINTeed CORPORATION; SAINT-GOBAIN CORPORATION; SAINT-GOBAIN S.A. a/k/a COMPAGNIE DE SAINT-GOBAIN; TIN INC. d/b/a TEMPLE-INLAND INC.; PABCO BUILDING PRODUCTS, LLC, <i>Defendants.</i></p>	CASE NO. 3:13-cv-31
<p>JERRY R. BERKHOUS D/B/A BERKHOUS DRYWALL & CONSTRUCTION, Individually and on Behalf of all Others Similarly Situated, <i>Plaintiff,</i> vs. NATIONAL GYPSUM COMPANY a/k/a NEW NGC, INC.; GOLDEN EAGLE INDUSTRIES, INC. a/k/a SPANGLER COMPANIES, INC.; LAFARGE NORTH AMERICA INC., LAFARGE S.A. a/k/a LAFARGE WORLDWIDE; AMERICAN GYPSUM COMPANY LLC, GEORGIA-PACIFIC LLC; USG CORPORATION; L&W SUPPLY CORPORATION; CERTAINTeed CORPORATION; SAINT-GOBAIN CORPORATION; SAINT-GOBAIN S.A.; TIN INC. d/b/a TEMPLE-</p>	CASE NO. 3:13-cv-35

<p>INLAND INC.; PABCO BUILDING PRODUCTS, LLC, <i>Defendants.</i></p>	
<p>ERIEZ CONSTRUCTION, INC., Individually and on Behalf of all Others Similarly Situated, <i>Plaintiff,</i> vs. NEW NGC, INC.; USG CORPORATION; UNITED STATES GYPSUM COMPANY; L&W SUPPLY CORPORATION; LAFARGE NORTH AMERICA INC.; CERTAINEED CORP.; SAINT- GOBAIN CORPORATION; GEORGIA-PACIFIC LLC; AMERICAN GYPSUM COMPANY LLC; TIN INC. d/b/a TEMPLE- INLAND INC.; PABCO BUILDING PRODUCTS, LLC, <i>Defendants.</i></p>	<p>CASE NO. 3:13-cv-59</p>

STIPULATION AND ORDER

WHEREAS, currently pending before this Court are three civil actions alleging a conspiracy to restrain trade in domestic drywall in violation of the Sherman Antitrust Act (the “WDNC Related Actions”), as follows:

Caceres Drywall Corp. v. National Gypsum Company, et al., C.A. 3:13-cv-00031.

Berkhous v. National Gypsum Company, et al., C.A. 3:13-cv-00035.

Eriez Construction, Inc. v. New NGC, Inc, et al., C.A. 3:13-cv-00059.

WHEREAS, other such Related Actions may subsequently be filed in this Court ;

WHEREAS, other related civil actions are pending or may be subsequently filed in any other federal or state court making similar allegations as do Stipulating Plaintiffs (“Other Related Actions”), including, but not limited to:

Innovated Services LLC, Inc. v. USG Corp., et al., 1:13-cv-00502 (N.D. Ill.);

Grant Lumber Pole Buildings, LLC v. USG Corp. et al., 1:13-cv-00697 (N.D. Ill.);

Janicki Drywall, Inc. v. CertainTeed Corp., et al., 2:12-cv-07106 (E.D. Pa.);

New Deal Lumber & Millwork Co., Inc. v. USG Corp., et al., 2:12-cv-07161 (E.D. Pa.);

Sierra Drywall Systems, Inc. v. CertainTeed Corp., et al., 2:13-cv-00020 (E.D. Pa.);

Grubb Lumber Company, Inc. v. USG Corp., et al., 2:13-cv-00249 (E.D. Pa.);

Pitter v. CertainTeed Corp., et al., 2:13-cv-00384 (E.D. Pa.);

Glaser v. CertainTeed Corp., et al., 2:13-cv-00559 (E.D. Pa.);

Ivyland Builders, LLC v. USG Corporation, et al., 2:13-cv-00563 (E.D. Pa.);

Agbodike v. CertainTeed Corp., et al., 2:13-cv-00607 (E.D. Pa.); and

Oregon State Drywall, LLC v. CertainTeed Corp., et al., 2:13-cv-00620 (E.D. Pa.)

WHEREAS, Plaintiffs in the WDNC Related Actions (“Stipulating Plaintiffs”) have moved for consolidation of the WDNC Related Actions in this Court;

WHEREAS, Stipulating Plaintiffs intend to file a Consolidated Amended Complaint after consolidation of the WDNC Related Actions;

WHEREAS, Stipulating Defendants include the undersigned and other Defendants such as shall join in this stipulation in accordance with Paragraph Five, below.

WHEREAS, Stipulating Plaintiffs and Stipulating Defendants, by and through their undersigned counsel, stipulate to the following Order:

1. Defendants will not be required to answer or otherwise plead in response to the complaints filed or any consolidated or amended complaints filed in the future in the WDNC Related Actions until 30 days after a consolidated amended complaint is filed in a transferee court. Plaintiffs will file their opposition to a motion to dismiss, if filed, within 30 days thereafter. In the event that the Motion for Consolidation and Transfer under 28 U.S.C. § 1407 is denied, the parties will confer within seven (7) days of the JPML’s order regarding the due date for responsive pleadings in the WDNC Related Actions. No discovery shall be served in the WDNC Related Actions while this stipulation is in effect.

2. Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that service of the individual complaints filed in the WDNC Related Actions upon their counsel shall constitute valid and sufficient process and service of process under the Federal Rules of Civil Procedure, the U.S. Constitution, and any other applicable statute, rule, regulation, or anything else having the force and effect of law.

3. Except as to the sufficiency of process or service of process, Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that the entry into this

stipulation by the Stipulating Defendants shall not constitute a waiver of any jurisdictional defenses that may be available under Rule 12 of the Federal Rules of Civil Procedure, a waiver of any affirmative defenses under Rule 8 of the Federal Rules of Civil Procedure, or a waiver of any other statutory or common law defenses that may be available to the Stipulating Defendants in the WDNC Related Actions and the Other Related Actions. The Stipulating Defendants expressly reserve their rights to raise any such defenses in response to any operative or amended complaint that may be filed relating to this action.

4. Defendants agree that they will seek a substantially similar stipulation in any related action and, if they are unable to reach agreement, will file a motion to stay any related action before filing a responsive pleading in those related actions;

5. Further, and notwithstanding any other provision set forth herein, Stipulating Plaintiffs and Stipulating Defendants hereby stipulate and agree if any Stipulating Defendant answers, moves, or otherwise pleads in response to any complaint filed in any Other Related Action before the date required by this stipulation, such Stipulating Defendant shall file an answer, motion, or other responsive pleading in all WDNC Related Actions on the same day as such answer, motion, or other responsive pleading is filed in any such Other Related Action.

6. Defendants agree that they will engage in a conference pursuant to Fed. R. Civ. P. 26(f) with Plaintiffs within 14 days of appointment of lead counsel for the Plaintiffs in the transferee court.

7. Stipulating Plaintiffs and Stipulating Defendants further stipulate and agree that this extension is available, without further stipulation, to all named defendants who notify Stipulating Plaintiff in writing of their intention to join this Stipulation.

8. Plaintiffs agree to dismiss without prejudice Golden Eagle Industries, Inc. A/K/A Spangler Companies, Inc., Lafarge S.A. A/K/A Lafarge Worldwide, Saint-Gobain S.A. A/K/A Compagnie De Saint-Gobain within 10 days of entering into this Stipulation.

9. Defendants agree to notify the Court by February 12, 2013, stating that Defendants do not object to Plaintiffs Motion to Consolidate.

STIPULATED AND AGREED TO THIS 12TH DAY OF FEBRUARY, 2013.

By: /s/ Larry McDevitt
Larry McDevitt
David Wilkerson, NC #35742
The Van Winkle Law Firm
11 North Market Street
Asheville, NC 28801
Telephone: 828-258-2991
Fax: 828-255-0255
Email: lmdevitt@ivwlawfirm.com
Email: dwilkerson@vwlawfirm.com

Counsel for Stipulating Plaintiffs Caceres Drywall Corp. (3:12-cv-31); Jerry R. Berkhous Drywall d/b/a Berkhous Drywall (3:12-cv-35); and Eriez Construction, Inc. (3:12-cv-59), and the Proposed Class

Jay W. Eisenhofer
Linda P. Nussbaum
Peter A. Barile III
GRANT & EISENHOFER P.A.
485 Lexington Avenue
New York, NY 10017
Tel: 646-722-8500
Fax: 646-722-8501

Michael E. Criden
Kevin B. Love
CRIDEN & LOVE, P.A.
7301 S.W. 57th Court, Suite 515
South Miami, FL 33143
Tel: 305-357-9000
Fax: 305-357-9050

Michael D. Hausfeld
James J. Pizzirusso
Mindy B. Pava
HAUSFELD LLP
1700 K Street, NW, Suite 650
Washington, DC 20006
Tel: 202-540-7200
Fax: 202-540-7201

Brent W. Landau
HAUSFELD LLP
1604 Locust Street, 2nd Floor
Philadelphia, PA 19103
Tel: 215-985-3273
Fax: 215-985-3271

***Counsel for Plaintiff Caceres Drywall Corp.
(3:13-cv-31), and the Proposed Class***

Arthur N. Bailey
ARTHUR N. BAILEY & ASSOCIATES
111 W. 2nd Street, # 4500
Jamestown, NY 14701
Tel: 716-664-2967
*Counsel for Plaintiff Jerry R. Berkhous
Drywall d/b/a Berkhous Drywall (3:13-cv-
35), and the Proposed Class*

Steven A. Asher
Mindee J. Reuben
Jeremy S. Spiegel
**WEINSTEIN KITCHENOFF & ASHER
LLC**
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
Tel.: 215-545-7200

*Counsel for Eriez Construction, Inc. (3:13-
cv-59), and the Proposed Class*

By: /s/ David L. Hanselman, Jr.

David L. Hanselman, Jr.
McDermott Will & Emery LLP
227 West Monroe Street
Chicago, IL 60606
Telephone: (312) 372-2000
Facsimile: (312) 984-7700
E-mail: dhanselman@mwe.com

Attorney for Defendant AMERICAN
GYPSUM COMPANY LLC

By: /s/ Rebecca Weinstein Bacon
Rebecca Weinstein Bacon
Bartlit Beck Herman Pelanchar & Scott LLP
54 West Hubbard Street
Chicago, IL 60654
Telephone: (312) 494-4400
Facsimile: (312) 494-4440
E-mail: rweinstein.bacon@bartlit-beck.com

Attorney for Defendants USG CORPORATION, UNITED STATES GYPSUM COMPANY,
and L&W SUPPLY CORPORATION

By: /s/ George A. Nicoud III
George A. Nicoud III
Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Telephone: (415) 393-8308
Facsimile: (415) 374-8473
E-mail: tnicoud@gibsondunn.com

Attorney for Defendant GEORGIA-PACIFIC LLC

By: /s/ Mark W. Nelson
Mark W. Nelson
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006
Telephone: (202) 974-1622
Facsimile: (202) 974-1999
E-mail: mnelson@cgsh.com

Attorney for Defendant LAFARGE NORTH AMERICA INC.

By: /s/ Bradley C. Weber
Bradley C. Weber
Locke Lord LLP
2200 Ross Avenue, Suite 2200
Dallas, TX 75201
Telephone: (214) 740-8497
Facsimile: (214) 756-8497
E-mail: bweber@lockelord.com

Attorney for Defendant PABCO BUILDING PRODUCTS, LLC

By: /s/ Everett J. Bowman
Everett J. Bowman
Robinson, Bradshaw & Hinson, P.A.
101 North Tryon Street, Suite 1900
Charlotte, NC 28246
Telephone: (704) 377-8329
Facsimile: (704) 373-3929
E-mail: ebowman@rbh.com

Attorney for Defendants NEW NGC, INC.

By: /s/ Robert A. Milne
Robert A. Milne
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
Telephone: (212) 819-8924
Facsimile: (212) 354-8113
E-mail: rilmne@whitecase.com

Attorney for Defendant CERTAINTEED CORPORATION

By: /s/ James T. McKeown
James T. McKeown
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 297-5530
Facsimile: (414) 297-4900
E-mail: jmckeown@foley.com

Attorney for Defendant TIN INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.



Graham C. Mullen
United States District Judge

